S.B.CIVIL WRIT PETITION NO.2024/2006
(State of Rajasthan & ors. Vs. Badri Prasad)

Date of order : 02.06.2006

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.H.R.Soni, Addl. Government Advocate

This writ petition, filed on 07.06.2005, is directed against the order dated 18.09.2003 passed by the Sessions Judge, Hanumangarh in Criminal Revision Petition No.153/2003 whereby the learned Sessions Judge set aside an order passed by the Sub-Divisional Magistrate, Hanumangarh on 21.07.2003 for attachment of the land in dispute and appointment of the Station House Officer, Police Station, Bhadra as receiver to take over its possession and management.

The learned Sessions Judge proceeded to set aside the order dated 21.07.2003 passed by the Sub-Divisional Magistrate, Hanumangarh purported to have been passed in exercise of the powers under Section 146 of the Code of Criminal Procedure, 1973 ('the Code') fundamentally on the ground that the property in dispute remains subject matter of litigation in a suit for perpetual injunction filed by the revisionist; and in the suit a decree was passed on 27.01.2003

and appeal against the same was pending before the Revenue Appellate Authority, Hanumangarh. The learned Sessions Judge with reference to several decisions of this Court held that the dispute being pending before the competent court, if at all there was any likelihood of breach of peace, appropriate proceedings could have been taken under Sections 107, 151 of the Code. From the averments taken in this writ petition, it appears that the aforesaid appeal before the Revenue Appellate Authority had also been dismissed and at the time of filing of the writ petition, a second appeal was pending before the Board of Revenue.

Having heard the learned Additional Government Advocate and having examined the material placed on record, this Court is clearly of opinion that the impugned order passed by the Sessions Judge, Hanumangarh on 18.09.2003 remains unexceptionable and in any case, calls for no interference in this writ petition filed as late as on 07.06.2005.

The learned Sessions Judge has proceeded on relevant considerations and after examining record of the case and the law applicable thereto, has rightly observed that when the matter was pending in the revenue suit at appellate stage, the learned Sub-Divisional Magistrate was not justified in adopting proceedings under Section 145 of the Code. It has also rightly

been observed that if at all there was any likelihood of breach of peace, appropriate proceedings could have been taken under Sections 107, 151 of the Code. With appropriate preventive measures being available to be taken in accordance with law, the learned Sub-Divisional Magistrate was not justified in proceeding with attachment and appointment of receiver. The order passed by the learned Sessions Judge does not suffer from any error apparent on the face of record nor could be said to be leading to failure of justice.

Apart from the aforesaid, there remains another strong ground for which this Court is not inclined to interfere in the present case. The impugned order was passed as back as on 18.09.2003 setting aside the order passed under Section 146 of the Code. This writ petition itself had been filed only on 07.06.2005 i.e. nearly 20 months after passing of the impugned order. The proceedings that were annulled by the impugned order were under Section 146 of the Code, and by their very nature such proceedings could be taken up and maintained only when the matter is considered to be one of emergency. The very fact that for good 20 months, the petitioners have not bothered themselves about the impugned order dated 18.09.2003 makes it clear that the matter cannot be treated to be one of emergency so as to necessitate

exercise of any such powers as contemplated by Section 146 of the Code.

Moreover, though the petitioners have chosen not to place all the material on record but the averments in para 4 of the writ petition make it clear that the appeal filed against the judgment and decree dated 27.01.2003 had also been dismissed by the Revenue Appellate Authority and second appeal was pending before the Board of Revenue.

Overall facts and circumstances of this case make it apparent that neither there was any justification for exercise of powers under Section 146 of the Code nor the matter remains that of emergency so as to warrant any interference at this length of time. Viewed from any angle, no case for interference in the extra-ordinary writ jurisdiction of this Court is made out.

Consequently, this writ petition fails and is dismissed summarily.

(DINESH MAHESHWARI),J.

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